

ESTTA Tracking number: **ESTTA706199**

Filing date: **11/03/2015**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Notice of Opposition

Notice is hereby given that the following party opposes registration of the indicated application.

Opposer Information

Name	Bial-Portela & Ca., S.A.
Granted to Date of previous extension	12/30/2015
Address	Avenida da Siderurgia Nacional São Mamede do Coronado, P-4745-457 PORTUGAL
Attorney information	RYAN A MCGONIGLE HODGSON RUSS LLP 1540 BROADWAY 24TH FLOOR NEW YORK, NY 10036 UNITED STATES rmcgonig@hodgsonruss.com, naquino@hodgsonruss.com Phone:6462187537

Applicant Information

Application No	86435783	Publication date	09/01/2015
Opposition Filing Date	11/03/2015	Opposition Period Ends	12/30/2015
Applicant	AstraZeneca AB Vastra Malarehamnen 9 SÄdertÅrje, SE-15185 SWEDEN		

Goods/Services Affected by Opposition

Class 005. First Use: 0 First Use In Commerce: 0

All goods and services in the class are opposed, namely: Pharmaceutical preparations for use in oncology; pharmaceutical preparations for the treatment of cardiovascular diseases and disorders, metabolic diseases and disorders, respiratory diseases and disorders, gastrointestinal diseases and disorders, nervous system diseases and disorders, infection and inflammation

Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
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Mark Cited by Opposer as Basis for Opposition

U.S. Registration No.	4228362	Application Date	08/08/2011
Registration Date	10/23/2012	Foreign Priority Date	05/23/2011
Word Mark	ONGENTYS		

Design Mark	ONGENTYS
Description of Mark	NONE
Goods/Services	Class 005. First use: First Use: 0 First Use In Commerce: 0 Pharmaceutical preparations for the treatment of diseases and disorders of the central and peripheral nervous system; pharmaceutical preparations for the treatment of movement disorders; pharmaceutical preparations for the treatment of Parkinson's disease and parkinsonian disorders; pharmaceutical preparations for the treatment of restless legs syndrome

Attachments	79103307#TMSN.png(bytes) Magentyx_NOOP_11.3.15.pdf(134514 bytes)
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Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/Ryan A. McGonigle/
Name	RYAN A MCGONIGLE
Date	11/03/2015

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

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BIAL-PORTELA & CA., S.A.,

Opposer,

Mark: MAGENTYX (Word Mark)

v.

Serial No. 86435783

ASTRAZENECA AB,

Filed: October 27, 2014

Applicant.

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NOTICE OF OPPOSITION
PURSUANT TO 15 U.S.C. SECTION 1063

Opposer, Bial-Portela & Ca., S.A. (hereinafter, “Opposer” or “Bial-Portela”), a Portuguese *sociedade por ações* existing under the laws of Portugal and located and doing business at Avenida da Siderurgia Nacional, São Mamede do Coronado, P-4745-457, Portugal, believes that it will be damaged by the registration of the mark, MAGENTYX (Word Mark), shown in Application Serial No. 86435783, which was filed on October 27, 2014 by AstraZeneca AB, a corporation (*aktiebolag*) existing under the laws of Sweden and located at Vastra Malarehamnen 9, Södertälje SE-15185, Sweden (hereinafter, “the Applicant”), and hereby opposes the same under the provisions of 15 U.S.C. §1063 (Trademark Act of 1946, Section 13).

As grounds for opposition, Opposer alleges the following:

1. Applicant seeks to register the mark MAGENTYX (Stylized) as a trademark for “[p]harmaceutical preparations for use in oncology; pharmaceutical preparations for the treatment of cardiovascular diseases and disorders, metabolic diseases and disorders, respiratory diseases and disorders, gastrointestinal diseases and disorders, nervous system diseases and

disorders, infection and inflammation” in International Class 005 (“Applicant’s Goods”), as evidenced by the publication of said mark for opposition in the Official Gazette of September 1, 2015.

2. Applicant filed the application for the alleged mark MAGENTYX on October 27, 2014, pursuant to Section 1(b) of the Lanham Act.

3. The U.S. Patent and Trademark Office (“USPTO”) assigned U.S. Trademark Application Serial Number 86435783 to the application for the mark MAGENTYX (Word Mark) (“Applicant’s Mark”).

4. Opposer is the owner of U.S. Trademark Reg. No. 4228362 for the mark ONGENTYS (Word Mark)(“Opposer’s Mark”) for pharmaceutical preparations for the treatment of diseases and disorders of the central and peripheral nervous system; pharmaceutical preparations for the treatment of movement disorders; pharmaceutical preparations for the treatment of Parkinson's disease and parkinsonian disorders; pharmaceutical preparations for the treatment of restless legs syndrome (hereinafter, “Opposer’s Goods”).

5. Opposer’s Mark was registered in the USPTO on October 23, 2012 under Section 66(a) of the Lanham Act, 15 U.S.C. §1141f. Given Opposer’s prior registration of Opposer’s Mark, Opposer has priority.

6. The mark herein opposed is MAGENTYX, which is confusingly similar in sight, sound, and appearance to Opposer’s Mark when applied to the goods of the parties, namely, pharmaceutical preparations in International Class 005.

7. The essential elements of the marks of both parties are substantially identical and make the same commercial impression upon the consumer. The minor differences in the marks

are irrelevant and inconsequential, and do not alter the commercial impression of the respective marks.

8. The goods of Applicant and Opposer are identical in part, and related in part, and Applicant's intended registration of Applicant's Mark in connection with its goods is without the consent or permission of Opposer.

9. Since Opposer owns the Opposer's Mark, mistake or deception as to the source of origin of the goods will arise and will injure and damage the Opposer and its goodwill.

10. The registration of the Applicant's Mark to Applicant will cause the relevant purchasing public to erroneously assume and thus be confused, misled, or deceived, that Applicant's Goods are made by, licensed by, controlled by, sponsored by, or in some way connected, related or associated with Opposer, all to Opposer's irreparable damage.

18. Opposer believes that it is and will be damaged by registration of the mark applied for by Applicant.

19. Upon information and belief, service is proper upon Applicant as follows:

Wm. Charles Saunders, Esq.
Astrazeneca Pharmaceuticals LP
1800 Concord Pike
FOP3 318
Wilmington, DE 19897

WHEREFORE, Opposer prays that the application for registration of MAGENTYX (Word Mark), Serial No. 86435783, filed on October 27, 2014, be denied and that this Opposition be sustained.

Dated: November 3, 2015

Respectfully submitted for Opposer
Bial-Portela & Ca., S.A.

By:



Ryan A. McGonigle
Neil B. Friedman
HODGSON RUSS LLP
1540 Broadway, 24th Floor
New York, New York 10036

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of Opposer's Notice of Opposition, *In re Bial-Portela & Ca., S.A. v. AstraZeneca AB* was forwarded by first class postage prepaid mail by depositing the same with the U.S. Postal Service on this 3rd day of November 2015 to the correspondent for Applicant as identified in the application being opposed, with a courtesy copy via e-mail at the following address:

Wm. Charles Saunders, Esq.
Astrazeneca Pharmaceuticals LP
1800 Concord Pike
FOP 3 318
Wilmington, DE 19897


Ryan A. McGonigle